

A partner subsequently joining is not liable for what happened before he joined. (Section 249.) And any partner may be called on to make good any loss arising from the neglect or fraud of any member of the firm, in the management of the business of the firm. (Section 250.)

"Each partner who does any act necessary for, or usually done in, carrying on the business of such a partnership as that of which he is a member, binds his co-partners to the same extent as if he were their agent duly appointed for that purpose."

But not if the partners have agreed among themselves as to some restriction, and *notice* is given to persons dealing with them of the restriction, or such persons *know* of the restriction. (Section 251.)

A partner's estate is not liable for debt incurred *after* his decease. (Section 261.)

Persons dealing with a firm are affected by a *dissolution of partnership*, only when *public notice* has been given or where they themselves "had notice" of it. (Section 264.)

SECTION V.—SPECIFIC PERFORMANCE OF CONTRACTS.

§ 1.—*What is meant by the term.*

When a contract is broken, the usual remedy is to claim damages, and the Contract Act under the head of "Consequences of Breach of Contract" speaks only of this remedy, and tells us what sort of damages can be claimed.

But it is obvious that in many cases it is but poor consolation to get money damages; what we want is to have the work done, and it may be quite possible for the contractor to do the work, only he refuses, or neglects, or would like to pay the damages, not so much minding the money loss as being made to do the work. In some cases, therefore, the law will compel a man *specifically* to carry out or *perform* his contract.

This is really a sort of contract *procedure* law adjective to the substantive contract law we have just been dealing with, and so it

is kept as a separate subject, and is dealt with in Chapter II of Act I of 1877⁶.

Here, following the general plan of this chapter, I shall only notice first such provisions of the Act, as are likely to be wanted by a forest officer, who has a contract for work with a contractor, and does not want money damages, but wants to have *the work itself done*.

§ 2.—*When it can be ordered.*

In general, a decree for this can be obtained—

- (1) When no standard exists for ascertaining the money damage caused by non-performance.
- (2) When the payment of money would not afford adequate relief.
- (3) When it is probable that pecuniary compensation cannot be got.

It is a presumption of law (*which may however be rebutted*) that any contract to transfer *movable* property, (e.g., contract for sale of goods or materials) can be adequately relieved by money damages, and that a contract to transfer *immovable* property cannot. (Section 12.)

If there are parts of a contract which are separate and independent, and one part can and ought to be specifically performed, but not the other, a decree may be given for specific performance of the part that can be performed. (Section 16.)

There are other cases where a contract as a whole cannot be performed, and where the part that cannot be performed is either essential or is unimportant; the rules about this are in sections 14-15. Specific performance of *part* of a contract can only be had when either sections 14, 15, or 16 apply. (Section 17.)

§ 3.—*Compensation in the alternative.*

A person asking for specific performance may also ask in his

⁶ The "Specific Relief Act." It deals not only with the specific performance of contracts, but also with other orders of Court requiring a *thing* to be done specifically or not done. Hence the more general title.

suit for compensation, either in addition to or as an alternative for specific performance.

If the Court finds that there has been a breach of contract for which compensation is due, and yet specific performance cannot be decreed, it will decree the compensation.

If the Court thinks that besides specific performance some compensation is due for the breach, it may give compensation as well. (Section 19.)

The fact that a penalty or liquidated damages are mentioned in the contract, as payable on default, is no bar to a suit for specific performance. (Section 20.)

§ 4.—*Where Specific Performance cannot be ordered.*

There are some kinds of contracts which are expressly declared (section 21), to be such that specific performance *cannot* be ordered.

The whole section, and its numerous illustrations, may be referred to on occasion; here I shall only allude to those likely to be required in Forest business:

The first follows from what has been already said—

- (a) A contract will not be specifically enforced where money damages would be an *adequate* relief.
- (b) A contract, which goes into numerous and minute details, or which is so dependent on personal qualifications or volition of the parties or otherwise from its nature is such that the Court cannot enforce specific performance of its material terms⁷.
- (c) A contract the terms of which the Court cannot find with reasonable certainty.
- (d) A contract which is in its nature revocable.

(*Example*: A contract to take "as many sleepers up to 10,000 in number as Deputy Conservator A likes to supply.")

* * * * *

⁷ *Example*: A, a printer, agrees with B, a publisher, to write a novel in three volumes: this cannot be specifically decreed. A contracts to employ B on personal service, or B agrees to render personal service to A.

- (g) A contract which involves the performance of a *continuous duty* extending over a longer period than *three years* from its date.

A contract to refer a matter to arbitration cannot as such, be specifically denied. The proper course is to act under the Civil Procedure Code.

Specific performance cannot be decreed against a person who has assented to the contract for such grossly inadequate consideration that fraud or unfair advantage appears, nor if he assented consequent on misrepresentation or concealment. This is detailed in section 28, but as it is not likely that the forest officer, as plaintiff, will ever come within its terms, I do not go into further particulars.

§ 5.—*Order for Specific Performance always discretionary.*

A Court is never *bound* to decree specific performance, but must use discretion "guided by judicial principles and capable of correction by a Court of Appeal." (Section 22.) Such discretion may be used where, though there is no actual fraud or misrepresentation, the contract gives plaintiff an unfair advantage, or where it would be very hard on defendant in a way in which he had not foreseen, though the non-performance would inflict no hardship on plaintiff.

The forest officer will also readily understand that he cannot sue for specific performance from a contractor, if he (on behalf of Government) violates, or becomes incapable of performing, any *essential* term of the contract that has to be performed on his part; nor if he has already chosen another remedy and obtained satisfaction for the breach of contract. (Section 24.)

If a suit for specific performance is dismissed, it is a bar to another suit for money compensation (section 29); therefore the plaintiff should always ask for alternative compensation. (See section 19.)

§ 6.—*Suits to rectify a Mistake.*

In some cases suits may be brought to *rectify* written contracts,

where there is a *mutual* mistake, or a fraud, so that the writing does not express their true intention. (See section 31.) There may be a prayer for rectification and for specific performance of contract so rectified, in the same plaint. (Section 34.) And where a person has a right to have a contract *rescinded*, he may sue for rescission, in the cases specified in section 35.

If a person has executed a writing in a contract which is void or voidable, and he has "reasonable apprehension" that the instrument, if left outstanding, may cause him "serious injury," he may apply to the Court to order the instrument to be *delivered up* and *cancelled*. (Section 39.)